313 U.S. 587
No. 1081

FILED
MAY 23 1941
CHARLES ELMORE CROPLEY
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1940.

CHRISTIAN W. BECK,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI

To the United States Circuit Court of Appeals
for the Seventh Circuit
and

SUPPORTING BRIEF.

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pro se

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To the United States Circuit Court of Appeals for the Seventh Circuit.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Christian W. Beck, the petitioner, by Harry Fishbein and Edward K. Schwartz, his counsel, petitions this Honorable Court to grant the writ of certiorari, addressed to the United States Circuit Court of Appeals for the Seventh Circuit, commanding it and the clerk thereof to certify to this Honorable Court the records and proceedings of the above-entitled case in that court, numbered 7344-48 therein, wherein your petitioner was appellant, and respondent United States of America was appellee, together with its opinion therein, for review and determination of said cause by this Court.

Petitioner tenders herewith his petition, supporting brief, and a certified copy of the entire record in the cause, together with twelve copies of the record as printed in the United States Circuit Court of Appeals.

OPINION BELOW.

The opinion of the Circuit Court of Appeals was filed March 6, 1941. Petition for rehearing was denied March 27, 1941. A copy of the opinion appears in the appendix which follows petitioner's supporting brief.

STATEMENT OF MATTERS INVOLVED.

The United States Circuit Court of Appeals for the Seventh Circuit on March 6, 1941, affirmed a judgment of the District Court of the United States for the Northern District of Illinois, Eastern Division, convicting the petitioner on eighteen counts of an indictment, the first seventeen of which each charged this petitioner, along with a number of others as codefendants, with having devised a scheme and artifice to defraud and for obtaining money and property from certain named persons by means of false and fraudulent pretenses, representations and promises, and with using the mails to further the scheme. Each of the first seventeen counts specifically charged the mailing of a separate letter allegedly in furtherance of the scheme. The eighteenth count charged the petitioner, along with the same codefendants, with unlawfully conspiring to carry on the unlawful enterprise charged in the preceding seventeen counts.

Upon a trial before a jury the petitioner was found guilty upon all counts, and the petitioner was sentenced on the first seventeen counts to a term of five (5) years in prison, and on the eighteenth, or conspiracy count, his

sentence was fixed at two (2) years in prison (R. pp. 591, 592).

Although the record is voluminous, the following may be regarded as a fair, though brief, statement of the facts developed by the evidence:

In about May, 1936, and for some time prior, this petitioner was engaged as an officer of Crown Hill, Inc., and Crown Hill Trust in the conduct and operation of a cemetery enterprise known as the Crown Hill Cemetery, which was situated in Ohio (R. p. 469) at a point between Cleveland and Akron. At the time of trial the petitioner was a resident of Cleveland, where the headquarters of the business were located since 1929, and Cleveland was his residence since 1930. Prior to going to Cleveland, petitioner lived in Tulsa and he had developed burial parks both there and in Oklahoma City. Coming to Cleveland in about December, 1928, he considered the possibilities of developing a burial park in Cleveland, and as a consequence, the property which later was known as Crown Hill Cemetery, consisting of two farms, one of 150 acres and one of 100 acres, was purchased by him for $168,000.00 or $187,000.00 with a down payment of $50,000.00 cash. Title to the property was held by Crown Hill, Inc., a nonprofit association, and another organization known as the Crown Hill Trust, a Massachusetts Trust, was organized to act as selling agent for the corporation. The petitioner headed both companies as president (R. p. 469).

After acquiring this land, $680,000.00 were spent from time to time, up to December 15, 1936, for improving and developing the cemetery (R. pp. 478-9), including landscaping, sodding, grading, planting of trees, flowers, shrubbery and nursery stock; and erection of a rustic brick fence; erection of a chapel and an administration building, with furnishings and an organ; erection of an orna-

mental fountain, designed by the same person who designed the Buckingham Fountain in Chicago, besides other improvements. At the time of trial further improvements were in progress, and still others in prospect (R. p. 479). The property so being developed was divided into cemetery lots, containing two to four burial plots and these were sold by the selling agent, the Crown Hill Trust, which had a number of salesmen, among whom were some of the defendants, as will hereafter appear. After the project had been going on for several years, and more specifically in the early part of 1936, Robert Stickney, a codefendant, also on trial, who had been an employee of petitioner, came to him and stated that he was considering starting a company in Chicago (R. pp. 470, 152) to deal in cemetery lots and that he, along with another Crown Hill employee, Mike Gordon (R. p. 527), also a codefendant, wished to purchase lots from Crown Hill and then resell them. There was objection interposed by petitioner to Robert Stickney's going (R. p. 152) because he needed Stickney in Cleveland, but this notwithstanding, Stickney announced to petitioner his intention of going to Chicago with Gordon and then there ensued a discussion as to what arrangements could be made for the sale of lots to the Chicago organization by Crown Hill (R. pp. 152 and 153). The particular sections to be available for sale in this manner to the new organization were numbers 42, 72 and 73. The prices, both of purchase and resale, were discussed and then came up the question of financing the operations in Chicago (R. p. 154).

The Crown Hill Trust agreed to finance Stickney and Gordon up to $7,500.00 (R. p. 155). Thereafter Stickney went to Chicago (R. p. 151), rented quarters, and Mrs. Helen B. Nichols, a codefendant not on trial, followed (R. p. 84). Gordon came later (R. p. 572). A Massachusetts trust agreement was drafted and a trust created called

the First Commonwealth Trustees. The matter of the trust was handled by Arthur C. McHenry, a codefendant not on trial. Mrs. Nichols and Mr. McHenry (R. p. 68) were named the Trustees. A bank account was opened (R. p. 84). One thousand lots were purchased from the Crown Hill, Inc., by the First Commonwealth Trustees (R. pp. 172 and 173) under an agreement. Office furniture was purchased, office help was employed and lists containing names of holders of defaulted bonds and other securities were purchased (R. p. 85). A mailing card index system was installed (R. p. 247). Various persons were written letters with which were enclosed blank inquiry cards (R. pp. 189 and 208). Salesmen, who were codefendants in the case, were given the inquiry cards, which were signed and returned by the persons making inquiry (R. p. 528). The salesmen would approach these people and procure from them bonds and other securities and sometimes cash in payment for burial lots, as hereinafter more fully described. The method used was this: Salesmen would send in the securities along with the written authority from the owner to the First Commonwealth Trustees, authorizing them to dispose of such securities. Sales of the securities were made to brokers, who would issue confirmation slips indicating the amount realized from the sale of the securities. The amount thus realized was divided by $160.00, being the established price per Crown Hill lot, and for which certificates of perpetual burial rights were issued to purchasers, together with a form of listing contract, by the terms of which the certificate owner would receive in return for an exclusive contract of resale, a guaranty of the payment of 50 cents per month per lot for a period up to twenty-four months. These transactions were carried on, in part, by mail (R. p. 87). The resale listings, when signed, were then to be given to the Crown Hill Trust for them to resell (R. p. 88). The resale

listings, however, were not, in fact, mailed by the First Commonwealth Trustees to Crown Hill Trust until after the petitioner severed his connection with the Crown Hill Trust on December 15, 1936 (R. p. 498). The First Commonwealth Trustees operated in Chicago until May 18, 1937 (R. p. 88).

Evidence introduced by the Government for the purpose of showing the use of the mails in connection with the specific charges which form the basis of the various substantive counts, showed that the dates of the only alleged mailings on which the Government relied were subsequent to that on which the undisputed evidence showed this petitioner to have disassociated himself from all connection with the alleged illegal operations. The date on which this petitioner terminated his connections, as aforesaid, was December 15, 1936 (R. pp. 381, 270, 80 and 500).

The instances of alleged mailings occurring after termination of petitioner's connections are shown in the Government's own evidence as follows:

Count	Date of Mailing	Sender
15	January 15, 1937	John Martin (R. p. 31)
16	January 19, 1937	John Martin (R. p. 33)
7	January 27, 1937	John Martin (R. p. 19)
14	February 1, 1937	John Martin (R. p. 30)
5	February 2, 1937	John Martin (R. p. 16)
2	February 17, 1937	John Martin (R. p. 12)
8	April 10, 1937	H. S. Nichols (R. p. 21)
10	May 13, 1937	John Martin (R. p. 24)
9	May 22, 1937	John Martin (R. p. 22)
11	May 28, 1937	John Martin (R. p. 25)
3	July 26, 1937	John Martin (R. p. 14)
12	March 16, 1937	H. S. Nichols (R. p. 27)
1	March 8, 1937	John Martin (R. p. 10)

In respect to all counts, there was a total absence of any direct evidence of this petitioner's connection with (a) the

mailings and (b) the commission of any other acts in furtherance of the unlawful scheme.

The Government's evidence as to the transactions referred to in each of the substantive counts was substantially of one pattern. There was evidence of alleged misrepresentations by salesmen of the nature of the transaction which the salesmen were seeking to bring about. This evidence tended to show the existence of a scheme to defraud, participated in by certain persons.

There was no evidence to show knowledge of this petitioner of the commission of any of the fraudulent acts committed in connection with the sale of the lots and there was no evidence to show that he authorized any of these acts or that he ever ratified any of them. He had nothing to do with the guaranty or the formation of the guaranty company. If any evidence can be said at all to have existed to connect the petitioner with any of the wrongful doings, such evidence was entirely circumstantial or based upon inference. But the record is devoid of circumstantial evidence of a substantial nature, and if inferences are drawn they can only be drawn from other inferences and not from any evidence adduced at the trial.

This petitioner testified in his own behalf and denied all connection with the First Commonwealth Trustees, except as relates to the sale to them of lots in the Crown Hill Cemetery. He denied all knowledge of the facts and fraudulent representations and promises and pretenses engaged in by the various salesmen and others connected with the First Commonwealth Trustees; he denied that he ever authorized such acts on their part or that he ratified them. He further stated, as the Government's own case showed, that the Chicago enterprise of the First Commonwealth Trustees was conceived by Stickney, who directed and had full charge of the activities of the organization during

the period he was connected with it, with the defendant Gordon as the sales manager in charge of all salesmen (R. p. 473). Petitioner's evidence, which was undisputed, was that he had nothing to do with the creating of the common-law trust, nor did he make any suggestions as to who the trustees should be, nor did he know who the trustees were until they were ready to close the contract for the purchase of lots at wholesale (R. pp. 171-2), which was signed by the two trustees; that he did not employ office help for the First Commonwealth Trustees, nor did he rent office space, set up a bank account, nor employ or discharge any of its employees, nor did he receive any certificates of beneficial interest in the First Commonwealth Trust, and the only interest that he had was that for money due Crown Hill for lots deeded to First Commonwealth Trustees, which were not fully paid for.

There occurred in the trial, after considerable evidence had been taken, an incident, the effect of which was to deprive the petitioner of the fair trial to which he was entitled. This was the situation created by the calling of the codefendant, Stickney, as a witness for the Government (R. pp. 149, 150 and 151). When this stage of the case was reached there had already been four days of trial, during which Stickney, who was not represented by counsel, was in constant conference with, and receiving the cooperation of, the various lawyers for the defendants, including this petitioner's counsel, and at the time Stickney was called there had been no previous notice or knowledge on the part of this petitioner or his counsel that he was to be called, and that he would testify for the Government. This unusual procedure was appropriately objected to at the time, and a motion to withdraw a juror and declare a mistrial was presented, but overruled, when, on questioning Stickney, the Court was advised he wished to take the stand and testify.

Other evidence was improperly received over petitioner's objection, and subsequent motions by the petitioner to strike out certain evidence which had been improperly received were overruled. Motions for a directed verdict of not guilty filed by this petitioner at the close of the Government's case and again at the close of the whole case were overruled. After a verdict finding the petitioner guilty on all counts, a motion for a new trial, which this petitioner filed, proved unavailing, and, in due course, petitioner took his appeal.

QUESTIONS PRESENTED.

1. Was the evidence sufficient to warrant submission of the case to the jury, or should there instead have been a directed verdict of acquittal?

2. Where the Government's own evidence shows that the accused terminated his connections with the alleged unlawful enterprise prior to the time when any of the mailings occurred which are the basis of the several counts of the indictment, will a conviction be permitted to stand?

3. If subsequent to such termination by the accused of his connection with the alleged unlawful conspiracy as established by the evidence of the prosecution itself, he requests the doing of an act which is not in furtherance of the conspiracy, but which is instead entirely consistent with his withdrawal therefrom, is there thereby created a question of fact for the jury, as to whether the accused had made an effective withdrawal from the conspiracy?

4. Was the petitioner denied a fair and impartial trial when all the factors and circumstances surrounding the calling and use of petitioner's codefendant, Robert Stickney, as a Government witness, are taken into account?

REASONS RELIED UPON FOR ALLOWANCE OF WRIT OF CERTIORARI.

Petitioner respectfully submits that a review of this case on writ of certiorari should be allowed for the reasons following:

It should be allowed because the United States Circuit Court of Appeals has erroneously applied the Federal and Constitutional law in deciding the exceedingly important question whether, under facts such as are disclosed in this case, it can be said that petitioner received a fair and impartial trial. It should be allowed because in convicting petitioner, the District Court and the Circuit Court of Appeals have so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

It should be allowed because the Circuit Court of Appeals has affirmed a conviction in a situation where the record disclosed that petitioner was denied a fair and impartial trial. Under the well-settled holdings as to what constitutes a fair and impartial trial, and particularly under the authority of the very case on which the Court of Appeals based its decision, viz.: Heitler v. U. S., 244 Fed. 140, the petitioner in the instant case did not receive a fair and impartial trial. Furthermore, the Court of Appeals in its opinion, while evidently recognizing the force of the contention made by the petitioner on this point, justified its ruling in the following language (p. 7):

> "The trouble with this argument is that there is nothing in this record indicating that Beck has been prejudiced; consequently, we are unable to say that Beck was deprived of a fair and impartial trial."

The determination of the question whether, under the facts disclosed by the record, the petitioner was prejudiced,

should be of considerable public importance in furnishing a guide for the conduct of trials in Federal Courts, which will assure to the defendant, in a similar situation, a trial which is both fair and impartial.

There is a noticeable dearth of authority on the precise point here involved, with no decision by the United States Supreme Court so far as we can find, and the only case presenting a like situation is the Heitler case, supra, which would seem to sustain this petitioner's position.

The Supreme Court of the United States has apparently never defined what exactly constitutes a fair trial, and inasmuch as the right to a fair trial is a sacred one, of basic public importance, this Court should finally settle for the guidance of all Federal Courts, what does constitute a fair trial.

Certiorari, as herein prayed, should also be allowed because the Court of Appeals has in effect upheld a conviction where, under the Government's own evidence, he was entitled to an acquittal.

The evidence as referred to in the opinion (p. 9) of the Court of Appeals on this point was:

> "The record discloses that appellant Beck resigned from Crown Hill, Inc., and Crown Hill Trust on December 15, 1936, but it also appears that in May, 1937, at the time that Commonwealth closed its offices (after the date alleged in the first and last count of the indictment), he informed Mrs. Nichols to redeed those lots which remained unsold by Commonwealth to the First Refunding Corporation of Cleveland."

All the mailings referred to in the indictment took place after December 15, 1936, which was the time of petitioner's withdrawal from the alleged conspiracy brought about by his resignation above referred to. Yet, solely because of the occurrence in May, 1937, mentioned in the portion of

the opinion above quoted, the Court of Appeals disregarded the fact of the previous withdrawal from the conspiracy which the Government itself had proved and held that by this happening a question of fact was created which required the jury to decide whether an effective withdrawal from the conspiracy had been made. If this incident were one which could be said to be in furtherance of the conspiracy, or if it were not entirely consistent with the previous withdrawal, the view of the Court of Appeals on this point would not be open to question, but it will be found that this occurrence, far from being in furtherance of the unlawful scheme, was just the opposite, and if anything, emphasized the petitioner's disassociation from the wrongful enterprise. In this situation this Court should allow certiorari to the end, that not alone should no conviction be allowed to stand where the evidence does not support it, but also to clarify and eliminate confusion as to what constitutes an effective withdrawal from a conspiracy.

Wherefore, your petitioner prays that a writ of certiorari issue under the seal of this Court directed to the U. S. Circuit Court of Appeals, for the Seventh Circuit, commanding the said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings of the said Circuit Court of Appeals in the case number 7344-48, entitled on its docket U. S. A. v. Beck et al., to the end that this cause may be reviewed and determined by this Court as provided for by the statutes of the United States; that the judgment herein of the said Circuit Court of Appeals be reversed, and petitioner prays for such further relief as to the Court may seem proper.

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